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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/878,665	06/11/2001	Ulrich Deiss	ZTP 98 P 3021	2035

7590 11/26/2002

LERNER AND GREENBERG, P.A.  
POST OFFICE BOX 2480  
HOLLYWOOD, FL 33022-2480

EXAMINER

TRAN, KHOA H

ART UNIT	PAPER NUMBER
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3634

DATE MAILED: 11/26/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

09/878,665

Applicant(s)

DEISS, ULRICH

Examiner

Khoa Tran

Art Unit

3634

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 15 October 2002.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 2-9, 16-20 and 22-25 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 2-9, 16-20 and 22-25 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☒ The proposed drawing correction filed on 09/10/02 is: a) ☐ approved b) ☒ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

## Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_\_.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_.

***Continued Prosecution Application***

The request filed on October 15, 2002 for a Request Continued Examination (RCE) under 37 CFR 1.114 based on the parent Application No. 09/127,571 is acceptable and an RCE has been established. An action on the RCE follows.

It should be noted that claims 21-24 have been renumbered per Rule 37 CFR 1.126 to be claims 22-25. Applicant should make note of this so that correct reference to the claims in any future response is had.

***Drawings***

The proposed drawing correction and/or the proposed substitute sheets of drawings, filed on September 10, 2002 would be acceptable upon deletion of the extraneous written matter in Figure 1. Correction is required.

A proposed drawing correction or corrected drawings are required in reply to the Office action.

***Claim Rejections - 35 USC § 112***

The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

Claims 2-9, 16-20, and 22-25 are rejected under 35 U.S.C. 112, first paragraph, as containing subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor, at the time

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the application was filed, had possession of the claimed invention. It should be noted that there is no support in the disclosure for the prongs to have more than 2 legs. Note the language of "at least two" legs implies more than two legs. Appropriate correction is required.

Claims 2-9, 16-120 and 22-25 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. With respect to claims 22, 23 and 24, it is unclear how any of the prongs are pivotable about the respective base wire when they are fixedly connected thereto at the intersection of the legs. It appears that any "pivoting" is done with the base wire and not relative to the base wire. Claims 22-24 are further indefinite due to the "vicinity" recitation. In particular, "vicinity" is such a broad and relative term that it fails to preclude connection anywhere along the prong since any point of the prong would be "in the vicinity" of the intersection. If the connection at the intersection is desired, then such should be set forth. Further still, with respect to claim 25, the claim appears to be misdescriptive and/or inaccurate because it is not seen how either leg could be considered "parallel" to the rack base. It appears that reference should be with respect to the plane of the base. Claims 7, 8, and 20 improperly seek to remove limitations previously set forth. Specifically, claim 22 requires each prong to have at least two legs. Thus, it is improper to now state that only every other prong or staggered prongs have at least two legs. Further, claim 20 depends from a cancelled claim. Claim 19 now lacks antecedent basis for "said angled end", lines 1-2.

***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 2-9, 16-20, and 22-25 are rejected under 35 U.S.C. 102(b) as being anticipated by Remmler. Remmler discloses a dishwasher rack comprising:

- a plurality of base wires (50) forming a dish rack base, see Figure 1;
- a plurality of prongs each having first and second legs (62 and 60) interconnected at an intersection to form an L-shape, see Figure 4;

the prongs are connected to the respective base wire “in the vicinity” of the intersection and are pivotable between different pivot positions on the respective base wires, e.g., pivotable into a horizontal, vertical, and oblique positions such that the oblique position is a half way between horizontal and vertical positions, see Figures 4 and 5. With respect to claim 25, note that Figure 5, shows the first position, Figure 2 shows the second position, and the third position occurs when the leg 60 is perpendicular to the base as it is rotated between the first and second positions.

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Clark, Oghia et al. and Fiocca et al. are cited to show devices having similar configurations of design.

**Response to Arguments**

*September 10, 2002*

DPS Applicant's arguments filed ~~October 15, 200~~<sup>1</sup> have been fully considered but they are not persuasive.

With respect to applicant's arguments that Remmler fails to teach or suggest the prongs connected to the base wire in a vicinity of the intersection, it should be noted that the claim language does not require "at" the intersection. Rather, the claims merely require "in the vicinity" of the intersection. Connection at one free end of the prong would clearly constitute "in the vicinity" and thus Remmler is considered to meet the language of the claims. Note also that reliance on the specification to impart to the claims limitations otherwise not recited therein is ineffective.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Khoa Tran whose telephone number is (703) 306-3437. The examiner can normally be reached on Monday through Thursday from 8:30 A.M. to 7:00 P.M.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Daniel P. Stodola, can be reached on (703) 308-2686. The fax phone number for this Group is (703) 305-3597 or (703) 305-3598.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Group receptionist whose telephone number is (703) 308-2168.

If the applicant is submitted by facsimile transmission, applicant is hereby reminded that the original should be retained as evidence of authenticity (37 CFR 1.4

and M.P.E.P. 502.02). In general, most responses and/or amendments not requiring a fee, as well as those requiring a fee but charging such fee to a deposit account, can be submitted by facsimile transmission. Responses requiring a fee which applicant is paying by check **should not be** submitting by facsimile transmission separately from the check. Responses submitted by facsimile transmission should include a Certificate of Transmission (M.P.E.P 512). The following is an example of the format the certification might take:

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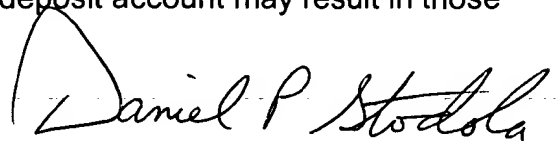
Type or printed name of person signing this certificate:

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(Signature)

Furthermore, please do not separately mail the original or another copy unless required by the Patent and Trademark Office. Submission of the original response or a follow-up copy of the response after your response has been transmitted by facsimile will only cause further unnecessary delays in the processing of your application; duplicate responses where fees are charged to a deposit account may result in those fees being charged twice.

Khoa Tran  
November 18, 2002



DANIEL P. STODOLA  
SUPERVISORY PATENT EXAMINER  
TECHNOLOGY CENTER 3600